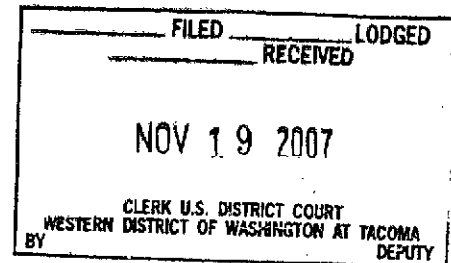


THE HONORABLE RONALD B. LEIGHTON



07-CV-05005-ORD



**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

JESSE R. CHASTEEN,

Plaintiff,

vs.

QED SYSTEMS, INC., a corporation registered in the
state of Washington

Defendant.

NO. 07-CV-5005RBL

STIPULATED PROTECTIVE ORDER

WHEREAS, discovery and other proceedings in this action may involve the production or disclosure of confidential information;

IT IS HEREBY STIPULATED AND AGREED, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, by and among the undersigned parties to this action, and any other person who agrees in writing to become bound by the terms of this protective order ("the Order"), subject to approval by the Court, as follows:

1. As used herein, "Producing Party" shall refer to any person or entity producing information, documents, discovery responses or testimony in connection with this litigation.

Definition of Protected Information.

2. "Confidential" information is any information, testimony, written response to discovery, document, or thing produced in connection with this litigation that is reasonably and in good faith believed by a Producing Party to contain trade secret or other confidential commercial, proprietary, personal information.

3. "Confidential - Attorneys' Eyes Only" information is any information, testimony, written response to discovery, document, or thing produced in connection with this litigation that is reasonably and in good faith believed by a Producing Party to contain trade secrets or other confidential commercial, proprietary, or personal information and which are to be produced in this action but subject to additional restrictions.

4. "Confidential" and "Confidential - Attorneys' Eyes Only" information is collectively referred to herein as "Protected Information."

5. Protected Information may include:

(a) papers, tapes, documents (including answers to interrogatories, requests for production of documents or requests for admission), disks, diskettes, and other tangible things produced by or obtained from a Producing Party;

(b) transcripts of depositions herein and exhibits thereto; and

(c) copies, extracts, notes, and complete or partial summaries, which are based wholly or in part upon the examination or review of Protected Information produced in this litigation.

Designation of Protected Information.

6. Where practical, the Producing Party shall designate Protected Information in document form by stamping or otherwise marking every page of the document "Confidential" or "Confidential - Attorneys' Eyes Only," or some similar language, as applicable. Other forms of Protected Information shall be so marked in any other reasonable manner appropriate to the form in which the Protected Information is produced.

1 7. When a party initially produces documents for inspection, no marking need be made by
2 the Producing Party in advance of the inspection. For purposes of the inspection, all documents shall be
3 treated as containing Protected Information. After documents are selected for copying, the Producing
4 Party may appropriately mark the copies of the selected documents as Protected Information before they
5 are produced.

6 8. In all other cases, designation of Protected Information shall be made at the time of
7 production.

8 **Disclosure of Protected Information.**

9 9. Material that is designated "Confidential - Attorneys' Eyes Only" may be disclosed
10 solely to the following persons:

11 (a) the Court;

12 (b) court personnel including stenographic reporters engaged in such proceedings as
13 are necessarily incident to preparation for trial;

14 (c) counsel for any Party, and the paralegal, stenographic, clerical and secretarial
15 personnel employed by such counsel; and

16 (d) any third-party consultant or independent expert retained in connection with this
17 action and who is not employed by, affiliated with (whether as a consultant or otherwise), controlled by,
18 agents of, or materially interested in any Party, or any competitor of any Party.

19 10. Material that is designated "Confidential" may be disclosed solely to the persons
20 identified above, and in addition, to the parties in this action.

21 11. Each party, counsel, or person identified in paragraph 9(d) above to whom "Confidential
22 - Attorneys' Eyes Only" material is furnished, shown, or disclosed shall, before receiving access to such
23 materials,

24 (a) be provided by counsel furnishing him/her such material a copy of this Order;

25 (b) agree to be bound by its terms;

1 (c) shall consent to be subject to the personal jurisdiction of the United States District
 2 Court for the Western District of Washington with respect to any proceeding relating to enforcement of
 3 this Order, including any proceeding relating to contempt of court; and

4 (d) shall certify that s/he has carefully read the Order and fully understands its terms,
 5 by signing the certificate attached as Exhibit A. The certificate shall be of the form set forth in
 6 Exhibit A hereto. Any Party or counsel making disclosure to any person as described above shall retain
 7 the original executed copy of said certificate until final termination of this litigation.

8 **Depositions.**

9 12. No person shall attend portions of depositions pursuant to Federal Rules of Civil
 10 Procedure 30 or 45 at which Protected Information is disclosed unless such person is an authorized
 11 recipient under the terms of this Order. If, during the course of a deposition, the response to a question
 12 would require the disclosure of Protected Information, the witness may refuse to answer or the Party
 13 whose Protected Information would be disclosed may instruct the witness not to answer or not to
 14 complete the answer, as the case may be, until any persons not authorized to receive such information
 15 have left the room.

16 13. Counsel, the Producing Party, or the Parties may designate information disclosed during a
 17 deposition pursuant to Federal Rules of Civil Procedure 30 or 45 as "Confidential" or as "Confidential -
 18 Attorneys' Eyes Only," as applicable, by stating on the record before the conclusion of the deposition
 19 that the deposition contains Protected Information. Within 30 (thirty) days after the completion of the
 20 transcript of such deposition (as certified by the court reporter), Counsel for the Producing Party shall
 21 designate portions of the transcript as "Confidential" or as "Confidential - Attorneys' Eyes Only," as
 22 applicable in a written notification served on opposing counsel. Written notification designating
 23 Protected Information shall identify the specific pages and lines of the transcript that contain Protected
 24 Information. Counsel for each party shall attach a copy of such notification to the face of the transcript
 25 and to each copy of the transcript. In addition, the portion of the deposition transcript containing

1 Protected Information shall be stamped with the appropriate designation. Before the expiration of such
 2 thirty (30) day period, all information disclosed during a deposition shall be treated as Protected
 3 Information, unless otherwise designated or agreed to by the parties and the witness, or ordered by the
 4 Court.

5 **Erroneous or Challenged Designations.**

6 14. If Protected Information is produced or disclosed without having been designated
 7 "Confidential" or as "Confidential - Attorneys' Eyes Only," as applicable, but should have been so
 8 designated, future disclosure of the document or thing may be restricted in accordance with this
 9 Stipulated Protective Order by notifying the receiving parties in writing of the change in or addition of
 10 such restrictive designation with respect to the document or thing. The receiving parties shall then take
 11 reasonable steps to prevent any further disclosure of such newly designated Protected Information,
 12 except as permitted by this Order. If any receiving party objects to such revised designation within ten
 13 (10) business days of notification, the party seeking the revised designation shall apply to the Court for
 14 an Order allowing such revised designation.

15 15. Should any Party to whom Protected Information is disclosed object to the designation of
 16 such materials as Protected Information, that party shall notify the party making the designation, in
 17 writing, and request that the party re-classify the document, information, or testimony. If such re-
 18 classification is not forthcoming within ten (10) days, the objecting party may apply to the Court. Until
 19 the Court rules to the contrary, all materials designated as "Confidential," or as "Confidential -
 20 Attorneys' Eyes Only," as applicable, shall be treated as such as described in this Order.

21 **Exceptions.**

22 16. Nothing herein shall prohibit a Party, or its counsel of record, from disclosing a document
 containing Protected Information to the person the document identifies as an author or recipient of such
 document, or to any person (including third-party witnesses) for which prior written approval for

1 disclosure has been granted by the Producing Party. A Party's use for any purpose of its own
2 documents, which that Party produces in this action, shall not be considered a violation of this Order.

3 17. Notwithstanding any other provision of this Order to the contrary, the confidentiality
4 obligations of this Order shall not apply, or shall cease to apply, to any information that:

5 (a) at the time of disclosure hereunder, was already lawfully in possession of the
6 receiving party and was not acquired through discovery or under any obligation of confidentiality; or

7 (b) after disclosure hereunder, was lawfully acquired by the receiving party from a
8 third party lawfully possessing the same and having no obligation to maintain the confidentiality of the
9 information.

9 **Rights Reserved/Hearings/Trial.**

10 18. The foregoing is without prejudice to the right of any Party:

11 (a) to apply to the Court for a further protective order relating to any Protected
12 Information for use at trial or relating to any discovery in this litigation;

13 (b) to object to the production of documents it considers not subject to discovery; or

14 (c) to apply to the Court for an order compelling production of documents or
15 modification of this Order or for any order permitting disclosure of Protected Information material
16 beyond the terms of this Order.

17 19. All materials filed with this Court that include documents revealing any Protected
18 Information shall be filed with the Protected Information redacted. If, however, the Protected
19 Information is relevant and necessary evidence and therefore cannot be redacted, the parties agree they
20 will seek to file all such documents under seal pursuant to a stipulation between the parties in accord
21 with Local Rule 5(g). All unredacted Protected Information shall be filed in sealed envelopes or other
22 appropriately sealed containers on which shall be recorded the title of this action and a statement
23 substantially in the following form:

FILED UNDER SEAL: This envelope, filed in this case by [party], contains confidential documents covered by a judicial Protective Order. This envelope is not to be opened by, nor the contents revealed to, anyone except the Court and thereafter resealed.

20. Notwithstanding anything contained in this Order, any information, testimony, written response to discovery, document, or thing produced in connection with this litigation may be used at trial unless the Producing Party applies to the Court in advance of the pretrial conference for protection of that information, testimony or written response to discovery, document or thing at trial. If a timely application for such relief has been made, the Protected Information at issue in the application shall not be disclosed contrary to this Order pending ruling by the Court.

Termination of Lawsuit.

21. Within thirty (30) days of the conclusion of the trial and of any appeals, or upon other termination of this litigation, all documents, including, without limitation, all Protected Information, received under the provisions of this Order, shall be tendered back to the Producing Party, or destroyed, at the direction of the Producing Party. Any documents, papers, tapes, disks, diskettes, or other tangible things that include or contain information derived from Protected Information shall be destroyed, except that privileged documents and information in Court transcripts derived from Protected Information need not be destroyed. This paragraph shall not require the destruction of pleadings and exhibits thereto which contain Protected Information. Provisions of this Order shall continue to be binding on all persons subject to the terms of this Order until further order of this Court.

Miscellaneous.

22. In the event anyone shall violate or threaten to violate any terms of this Order, the aggrieved Party may seek any remedy permitted by law, including but not limited to contempt, damages

1 and injunctive relief, and it shall not be a defense to a request for injunctive relief that the aggrieved
2 Party possesses an adequate remedy at law.

3 23. All persons subject to the terms of this Order agree that this Court shall retain jurisdiction
4 over them for the purpose of enforcing this Order.

5 24. All documents produced by, or discovery responses of, any Producing Party in these
6 proceedings, as well as all deposition testimony in these proceedings, that are designated as
7 "Confidential" or as "Confidential – Attorneys' Eyes Only" material shall be used for purposes of this
8 litigation and not for any business purpose.

9 25. This Stipulation and Order may be signed in counterpart by the Parties' respective
10 counsel and when signed shall become binding and effective as to each such Party.

11 DATED this 19th day of November, 2007
2006.

12 DORSEY & WHITNEY LLP

THE LAW OFFICES OF ALEX BUERGER

13 /s/ Sarah Jung Evans

/s/ Alex Buerger

14 Michael W. Droke, WSBA #25972

Alex Buerger, WSBA #25014

15 Sarah Jung Evans, WSBA 37409

Attorney for Plaintiff

Attorneys for Defendant

Jesse Chasteen

QED Systems, Inc.

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 DATED this 16th day of November, 2007.

18
19 
20 THE HONORABLE RONALD B. LEIGHTON

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, the undersigned, hereby acknowledge that I have received and read a copy of the Stipulated Protective Order ("Order") entered in *Chasteen v. QED Systems, Inc.*, United States District Court for the Western District of Washington at Tacoma; 07-CV-5005RBL, that I understand the provisions in the Order; that I agree to be bound by all provisions of the Order; that I submit to the jurisdiction of the U.S. District Court for the Western District of Washington at Tacoma, for the purpose of enforcing the Order; and that I understand that sanctions may be imposed by the Court, including an order of contempt, if I fail to abide by and comply with all the terms, conditions and restrictions imposed by the Order.

Date

Signature